IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 967 OF 1998
IN
NOTICE OF MOTION NO. 2340 OF 1998
IN
SUMMARY SUIT NO.1948 OF 1996

M/s. Reliance Industries Limited,
a company registered under the
provisions of the Companies Act,
1956 and having its registered
office at Maker Chambers IV, 3rd
floor, 222, Nariman Point,
Bombay -21. Appellants
(original Plaintiffs)

vs.

M/s. Manish Organics India Limited
a company registered under the
provisions of the Companies Act, 1956
and having its office at 63, Maker,
Chamber III, Nariman Point,
Bombay 400 021. Respondents

Ms. Anjali Chandurkar i/b. M/s.Purnanand & Co. for
the appellants.

None for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 19th August 2004

ORAL JUDGMENT (Per R.M. Lodha,J.):

The original plaintiff is in appeal before us. The plaintiff sold, supplied and delivered to the defendant (respondent herein) the goods. The said goods as per the invoice raised by the plaintiff valued an aggregate

sum of Rs.2,91,355/-. The said goods were duly received by the defendant without raising any dispute as to the quantity, quality or price. In respect of the said outstanding bill, the defendant failed and neglected to make the payment. According to the plaintiff, a sum of Rs.25,362.36 ps. was lying with the plaintiffs as a credit and after giving credit to the said amount, a sum of Rs.2,65,992.64 ps. remained outstanding. The defendant having not paid the outstanding amount, the plaintiff filed the summary suit claiming an amount of Rs.4,57,507.37 ps. with further interest on the sum of Rs.2,65,992.64 ps. at the rate of 24% per annum from the date of the suit until payment or realisation. After the writ of summons was served upon the defendant, the summons for judgement was taken out by the plaintiff. In opposition to the summons for judgment, the defendant filed reply affidavit. The defendant, in the reply affidavit, set out the defence that the entire amount has been paid and that nothing was payable by the defendant. According to the defendant, the suit was false, frivolous and baseless. The summons for judgement came up for consideration before the learned Single Judge on 21st April 1998. Nobody appeared for the plaintiff. The learned advocate for the defendant opposed the summons for judgment and submitted that the plaintiff is harassing the defendant. The learned Single Judge dismissed the summons for judgment as well

as the suit. The plaintiff then took out the notice of motion being notice of motion no.2340/1998 and prayed therein that the order passed by the learned Single Judge on 21st April 1998 be recalled and the summons for judgement and the suit be restored. The notice of motion was opposed by the defendant and by the order dated 29th June 1998 the learned Judge dismissed the notice of motion. It is this order which is under challenge in the appeal.

2. We heard the learned counsel for the appellant. Nobody appears for the respondent-defendant despite service.

3. Though the impugned order dated 29th June 1998 runs in 14 foolscap pages, we find that most of the consideration is irrelevant and besides the point. Dealing with simple notice of motion seeking restoration of summons for judgment and the suit, the learned Judge prefaced the judgment by observing thus:

> "More loyal than the King" is the under current of this Notice of Motion. There is no dearth of petty officers in the big business houses who would try their level best to please their higher bosses and they would do this at any cost as they don't have to bear the cost from their pocket. The present is one of such illustrations."

4. The learned Judge then considered few judgments of

the Supreme Court. Two of these judgments arise out of election petition under Representation of Peoples Act. These two judgments are judgements in the case of Azhar Hussain vs. Rajiv Gandhi, A.I.R. 1986 SC 1253 and Dhartipakar v. Rajiv Gandhi, A.I.R. 1987 S.C. 1577. We are afraid, the two judgements in the case of Azhar Hussain and Dhartipakar have no relevance. The other two judgements in the case of T.Arivandandam v. T.V.Satyapal, A.I.R.1977 S.C. 2421 and K.K. Modi v. K.N. Modi (citation not referred) also do not seem to have any application to the present case. It would be noticed that on 21st April 1998 what was posted before the learned Judge was summons for judgment. If the plaintiff had not appeared in support of the summons for judgment, it was open to the learned Judge to dismiss the summons for judgment in default or grant unconditional leave to the defendant to defend the suit. But there was no occasion for the learned Judge to dismiss the suit itself. When the notice of motion was taken out by the plaintiff for setting aside the order dated 21st April 1998, if the learned motion Judge was not satisfied with the cause shown by the plaintiff for non-appearance,he could have refused to restore the summons for judgment, but dismissal of the suit was not called for on 21st April 1998 and when the notice of motion was taken out, at least the suit ought to have been restored to file. In the order dated 21st April

1998 no reason is assigned as to why the suit is dismissed. However, the learned Judge proceeded to justify the dismissal of suit by setting out the reasons in the order dated 29th June 1998 which were not set out while dismissing the suit on 21st April 1998.

5. In our considered view, the learned Judge was not justified in dismissing the suit on 21st April 1998 and when the application for restoration of the suit was made out, he ought to have restored the suit even if he was not satisfied to restore the summons for judgment.

6. We, accordingly, allow the appeal in part, set aside the order dated 29th June 1998 to the extent the learned Judge refused to restore the suit. Summary Suit No.1948/1996 is restored to file and transferred to list of commercial causes. Since the respondent has not chosen to appear, no costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)